IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 15606 of 2006(G)

PETITIONER:

G.MUNIANDY, VAGAVARAI ESTATE,
VAGAVARA, MUNNAR.

BY ADV. SRI.LIJI.J.VADAKEDOM
SRI.P.RAMAKRISHNAN

RESPONDENTS:

1. REGISTRAR OF CO-OPERATIVE SOCIETY,
THIRUVANANTHAPURAM.

2. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETY (GENERAL), OFFICE OF THE JOINT REGISTRAR
OF CO-OPERATIVE SOCIETY, IDUKKI.

3. THE DEVIKULAM TALUK PLANTATION
WORKERS CO-OPERATIVE SOCIETY NO.K 382,
REPRESENTED BY ITS SECRETARY,
DEVIKULAM, IDUKKI DISTRICT.

4. R.RAJAN, MEMBER NO. 5159,
P.F.NO. 2754, NORTH DIVISION NULLATHANNI
ESTATE.

5. M.DICKSON, MEMBER NO.4433,
P.F.NO.2687, LOWER DIVISION, VAGAVURRAI ESTATE.

BY ADV. SRI.N.K.SUBRAMANIAN (R4)
SRI.S.ANANTHAKRISHNAN
BY SPECIAL GOVERNMENT PLEADER SMT.A.G.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1 True copy of the complaint dated 23.5.2005 submitted by R4 and R5 before R2.

Ext.P2 True copy of the Order dated 10.5.2006 issued by the second respondent under Sec. 44 of the KCS Rules.

RESPONDENT'S EXHIBITS:

Ext.R4(a) True copy of letter dt. 18.3.2005 by petitioner.

Ext.R4(b) True copy of letter dt. 16.2.2006 by Sanjose Tea Estate.

Ext.R4(c) True copy of the relevant pages of by laws.

Ext.R4(d) True copy of petition dt. 24.8.2005 before R2.

Ext.R4(e) True copy of judgment in W.P.C.No.30354/05 dt. 28.10.2005.

//true copy//

P.A. to Judge.

J.M. JAMES, J.

W.P.(C) No. 15606 of 2006

Dated this the 10th January, 2007.

J U D G M E N T

The writ petitioner was an employee of Tata Tea Estate. In that capacity, he was the member of the 3rd respondent Society. He obtained voluntary retirement, and drew the benefits from the Tea company on 15.2.2005. Under Clause 5(1) of the bye-laws, only a member of the staff or non-staff or workmen employed permanently in the Tea Plantation, Factories and sympathisers upto a limit of 20, within the Taluk, where the tea company is functioning, and residing within the area of operation of 3rd respondent Society, could be a member. If such a member ceases to be an employee, he shall cease to be a member of the 3rd respondent Society. Obviously, on 15.2.2005, the date of voluntary retirement of the writ petitioner, he ceased to be a member of the 3rd respondent Society.

2. A member of the 3rd respondent Society can also be a member of the Board of Directors. Accordingly, the writ petitioner was a member of the managing committee. However, there was a complaint made by few persons, including respondents 4 and 5, against his continuance as the member of the managing committee.

Therefore, the second respondent, Joint Registrar, enquired the matter, and passed Ext.P2 order, holding that the writ petitioner was not working with any of the Tea Estates, or residing within the operational area of the 3rd respondent Society. Hence, he has lost his membership, as contained, under Clause 5(1) of the bye-laws of the Society. Therefore, he was disqualified and removed under Rule 44(1)(j) of the Co-operative Society Rules, 1969, in short 'the Rules', from the membership of the committee. The same is under challenge by the writ petitioner through this writ petition.

3. I heard the elaborate arguments advanced by both sides. The learned counsel appearing for the writ petitioner raise a contention that under Rule 16(4) of the Rules, when a person ceases to be a member of the Society, the same has to be declared in writing, after hearing such person, by the Registrar, who passes such an order. There being no such order passed, in writing, declaring that the writ petitioner ceased to be a member, Ext.P2 is not sustainable. Hence, prayed that the same may be set aside.

4. Counsel appearing for respondents 4 and 5, as well as the learned Special Government Pleader submitted that on the voluntary retirement of the writ petitioner, and there being no material to show that he continued to function in any of the Tea Estates or

Factories, or comes within the provisions contained under Clause 5(1) of the bye-laws of the 3rd respondent Society, he automatically cease to be a member of the Society. Therefore, he cannot be a member of the managing committee as well. Hence, the removal of the writ petitioner under Rule 44(1)(j) of the Rules is legal.

5. Rule 44(1)(j) of the Rules is reproduced below:-

> **"44. Disqualification of membership of committee :-** (1) No member of the society shall be eligible for being elected, or appointed as a member of the committee of the society under S.28 if he]:-
>
> (a) to (i) .....
>
> (j) is disqualified under any other provisions in the bye-laws of the society;"

6. Rule 16(4) of the Rules is reproduced below:-

> "16.(4) Where a member of a society becomes ineligible to continue as such, the Registrar may of his own motion or on a representation made to him by any member of the society or by the financing Bank, by an order in writing declare that he has ceased to be a member of the society from the date of his order. The Registrar shall give such person an opportunity to state his objection, if any, to the proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard before passing an order as aforesaid. "

7. It is true that Ext.P1 complaint, dated 23.5.2005, was submitted before the second respondent. An enquiry was conducted by the Joint Registrar. The learned counsel appearing for the writ petitioner do not challenge the voluntary retirement, after obtaining the benefits from the Tata Tea Estate Company. Under Clause 5(1) of the bye-laws of the Society, as stated above, he ceased to be a member of the company, as he was not working within the Tea company or residing therein to bring within the Clause 5(1) of the bye-laws of the Society. But a contention was raised before the Joint Registrar that he joined another Tea Estate as Supervisor. Therefore, that fact also has been enquired into. It reveal that he joined another company and worked there for one month, but relinguished that post. It is important to note that after the voluntary retirement and ceasing to be a member of the 3rd respondent Society, as per the bye-law of the society, he had not applied either for the revival of the membership or for a fresh membership. When a person does not fall within the definitions or stipulations prescribed under Clause 5(1) of the bye-laws of the society, he is ineligible to be a member of the 3rd respondent Society. When the writ petitioner cannot be a member of the 3rd respondent Society, needless to say, he cannot be a member of the managing committee as well.

8. The learned counsel appearing for respondents 4 and 5, however, relied on **Sat Prakash v. Shiv Lal** (AIR 1991 P & H 199) and **Mahant Narayana Dessjivaru v. State of Andhra** (AIR 1959 A.P. 471), to emphasise the meaning of the expression ***'cease'*** interpreted by the learned Single Judge of the Punjab and Haryana High Court, as **'to discontinue or put an end to',** which is finding a place in Mahant Narayana's case as well.

9. The Bar placed reliance on **Poulose v. Joint Registrar** (1993 (2) KLT 366), wherein, the learned Single Judge of this Court had considered a situation where a person who cease to be a member of the Society should be given an opportunity to state his objections to the proposed declaration that, on ceasing to be a member of the Society, he also cease to be a member of the committee. The learned Single Judge concluded relying on Rule 44(1) & (2) of the Rules, that there is no question of giving an opportunity to state his objections, as he has nothing to object, when he ceases to be a member of the Society, as per the bye-laws.

10. In the above circumstances, there is no need to declare under Rule 16(4) of the Rules that the writ petitioner is not a member of the Society. There was also no material placed before the

authorities, to show that, the writ petitioner came within the scope of any of the conditions contained in Clause 5(1) of the bye-laws of the 3rd respondent Society.

11. On the voluntary retirement of the writ petitioner, and in the absence of any material to show that he continued within the operational area of the Society, as discussed above, he ceased to be a member, and therefore, he is ineligible to a member of the managing committee as well. Ext.P2 order had been passed by the second respondent, after considering all the aspects and contentions raised before them. He also enquired into all the matters and came to the conclusion that the writ petitioner did not fall in any of the categories mentioned in Clause 5(1) of the bye-laws of the 3rd respondent Society. Therefore, I find nothing to interfere with Ext.P2 order. Accordingly, this writ petition is dismissed.

J.M. JAMES,
JUDGE.

nj.